

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

February 19, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of **Federal Express Corporation** filed **12/17/97** in Docket **OST-97-3261** for:

XX *Exemption from dormancy condition:*

By Order 96-9-16 the Department allocated Federal Express five weekly frequencies to expand its U.S.-Thailand all-cargo operations, in addition to one frequency previously allocated to Federal Express. That award was subject to the condition that it will expire automatically and the frequencies will revert to the Department for reallocation if they are not used for a period of 90 days. Under the terms of the order, Federal Express' frequency allocation would expire on April 1, 1997, if Federal Express did not begin service by that date. On February 25, 1997, Federal Express sought an exemption to extend its startup date to September 1. By Notice of Action Taken dated March 21, 1997, the Department granted the extension. (See Order 97-5-6). Federal Express is currently operating five frequencies, and most recently operated its sixth frequency on November 15, 1997.

Federal Express seeks an exemption from the 90-day dormancy condition so as to delay startup of its sixth frequency until June 30, 1998. Federal Express states that because of Thailand's current troubled economy, the optimum date to commence its operations for the sixth frequency is June 30, 1998. Alternatively, Federal Express proposes that the Department modify the terms of the 90-day dormancy condition so as to eliminate the automatic termination and reversion provision and replace it with a mandatory notification provision under which there would be no need to take the allocation away from the original carrier until another interested carrier applied for the frequency. As a second alternative, Federal Express proposes that the Department eliminate the 90-day dormancy condition for the 6th frequency, so that use of that frequency by Federal Express is discretionary.

Northwest Airlines, Inc. and Air Micronesia, Inc. filed answers in support of Federal Express' alternative proposals, provided that all carriers allocated Thailand frequencies are granted the same relief. Polar Air Cargo filed an answer, objecting only to Federal Express' request for elimination of the automatic termination and reversion provisions on all of Federal Express' allocated frequencies. Polar argued that any unused or underutilized frequencies should be returned to the Department for reallocation.

(See Reverse Side)

Federal Express filed a consolidated reply, arguing that all commenting carriers support some modification of the dormancy condition. To the extent Polar objected, Federal Express stated that Polar misunderstood its proposed modification; and that under its proposal any unused frequencies potentially would be available for reallocation, the only difference being that they would not be available automatically as under the current dormancy provision.

Applicant rep.: Nathaniel Breed, 202-663-8078 *DOT analyst:* Sylvia Moore, 202-366-6519

DISPOSITION

XX *Granted (extension through June 30)*

XX *Balance Dismissed*

The above action was effective when taken: February 13, 1998, *through* June 30, 1998

XX *Under assigned authority (14 CFR 385) by:*

*Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)*

Conditions: The 90-day dormancy period will begin June 30, 1998, Federal Express' proposed startup date for its sixth U.S.-Thailand all-cargo frequency.

Remarks: It is the Department's intention that unused frequencies be made available to interested carriers on an immediate basis and not held until another carrier should seek to use them.

We dismissed that portion of Federal Express' application that sought modification of the 90-day dormancy condition. The purpose of the current dormancy condition, with its automatic termination provision, is to ensure that the Department will be able to exercise fully its powers to reallocate frequencies that are not currently being used and, thus, to ensure that we will be able to make full use of our rights under our bilateral aviation agreements with foreign countries. (Cf. Order 96-3-28 regarding service between the United States and South Africa). Adoption of Federal Express' proposed condition would not be consistent with achieving these important policy objectives.